UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

WAYNE SMITH, Plaintiff, v. STATE OF SOUTH DAKOTA, JASON GANT, in his official and personal capacity as Secretary of State of South Dakota, MIKE MILSTEAD, in his official and personal capacity as Minnehaha County Sheriff, DEPUTY SHERIFF JEFF GOMER, in his official and personal capacity, Defendants.	)	Civ. 11-4001 DEFENDANT NELSON AND STATE OF SOUTH DAKOTA'S STATEMENT OF MATERIAL FACTS IN SUPPORT OF SUMMARY JUDGMENT

COMES NOW, South Dakota Secretary of State Chris Nelson ("Defendant"), and the State of South Dakota, by and through the undersigned counsel, and hereby submits this Statement of Material Facts in support of their Motions for Summary Judgment. The Statements included below are, in part, based on the Affidavit of Secretary of State Nelson, (Doc. 17-1) and incorporated herein by reference.

1. Chris Nelson was the properly elected and qualified Secretary of State for the State of South Dakota from January of 2003 until January of 2011.

2. Under SDCL § 23-7-7 a permit to carry a concealed pistol is issued by the sheriff of the county in which the applicant resides pursuant to the terms of SDCL § 23-7-7.1.

3. The Secretary of State charged with the responsibility of creating an application form, filing the application and issuing the "official permit" under SDCL § 23-7-8.

4. SDCL § 23-7-8.1 subscribes the content of and requires the Secretary of State to create the "official permit".

5. Plaintiff's Complaint does not challenge the constitutionality of SDCL § 23-7-8 or 8.1. *See generally* Complaint (Doc. 1 and Amended Complaint Doc. 31)

6. The issuance of the "official permit" is a ministerial act that involves no discretion on the part of the Secretary of Sate.

7. The "official permit" is merely a formal laminated version of the temporary permit issued by the Sheriff.

8. The only statutory provision challenged by Plaintiff is SDCL § 23-7-7.1. *See generally* Complaint (Doc. 1 and Amended Complaint Doc. 31)

9. The Secretary of State has no discretion to grant or deny a permit under SDCL § 23-7-7.1.

10. The Sheriff possesses the sole ability to deny or grant a concealed pistol permit.

11. The Secretary of State did not make the decision on whether to issue a concealed pistol permit to Wayne Smith.

12. If a permit is granted by the Sheriff, the Secretary of State is required by statute to issue the "official permit."

Dated this 31st day of January, 2011.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Defendant Nelson's Motion to Dismiss was filed by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(D) (and the Court's Electronic Filing Standing Order) on this 31st day of January, 2011, to the following:

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